

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**CRYSTAL D. LEE**

Claimant

VS.

**LABOR PROS**

Respondent

AND

**CONTINENTAL WESTERN INSURANCE COMPANY)**

Insurance Carrier

Docket No. 1,018,812

**ORDER**

Claimant appealed the November 23, 2004 Order Denying Temporary Total Compensation & Medical Treatment (Order) entered by Administrative Law Judge Brad E. Avery.

**ISSUES**

Claimant alleges she developed bilateral upper extremity injuries due to the work she performed for respondent from June 1 through June 4, 2004. In the November 23, 2004 preliminary hearing Order, Judge Avery denied claimant's request for benefits after finding claimant failed to provide respondent with timely notice of her alleged accident.

Claimant contends Judge Avery erred. Although claimant's brief to the Board is somewhat unclear, claimant argues she provided respondent with notice of her bilateral upper extremity injuries either before June 4, 2004, when she last worked for respondent, or within 10 days of that date. In the alternative, claimant argues she provided respondent with timely notice of her accident as there was just cause for failing to report the accident within 10 days of its occurrence and, therefore, her notice period was expanded to 75 days of her last day of working for respondent. Accordingly, claimant requests the Board to reverse the November 23, 2004 Order.

Conversely, respondent and its insurance carrier (respondent) contends the November 23, 2004 Order should be affirmed. Respondent first argues claimant failed to provide timely notice of the accident. Respondent next argues claimant worked for

approximately one month after June 4, 2004, for another employer and, therefore, respondent should not be responsible for claimant's injuries.

The sole issue before the Board on this appeal is whether claimant provided her employer, Labor Pros, with timely notice of an accidental injury.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes:

The November 23, 2004 preliminary hearing Order should be affirmed.

Under the Workers Compensation Act, injured workers have the burden of proof to establish their right to compensation.<sup>1</sup> And that burden includes proving by a preponderance of the credible evidence that their position on an issue is more probably true than not when considering the whole record.<sup>2</sup>

Claimant testified that in early June 2004, before she discontinued working for respondent, she reported her upper extremity problems to someone who was later identified as respondent's assistant manager, Melissa Wallace. But Ms. Wallace also testified at the November 23, 2004 preliminary hearing and denied such conversation. Moreover, Ms. Wallace testified respondent did not receive notice of claimant's alleged injuries until August 18 or 19, 2004, when respondent received a letter from claimant.

After observing both claimant and Ms. Wallace testify, the Judge determined claimant had failed to provide respondent with notice of her alleged injuries within 10 days of their occurrence. In reaching that conclusion, Judge Avery implicitly found Ms. Wallace's testimony the more credible. Based upon the present record, the Board finds no persuasive reason to modify that finding. Furthermore, the record fails to establish that claimant had just cause for failing to report her injuries to respondent within 10 days of their occurrence. Accordingly, the period to provide respondent with notice of the accidental injuries was not extended.<sup>3</sup>

In short, claimant has failed to satisfy her burden of proof and establish she provided respondent with timely notice of her accidental injuries as required by K.S.A. 44-

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<sup>1</sup> K.S.A. 44-501(a).

<sup>2</sup> K.S.A. 2003 Supp. 44-508(g).

<sup>3</sup> See K.S.A. 44-520.

520. Accordingly, claimant's request for benefits should be denied at this juncture of the claim.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full presentation of the facts pertaining to the claim.<sup>4</sup>

**WHEREFORE**, the Board affirms the November 23, 2004 Order Denying Temporary Total Compensation & Medical Treatment entered by Judge Avery.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 2005.

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BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant  
Eric T. Lanham, Attorney for Respondent and its Insurance Carrier  
Brad E. Avery, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>4</sup> K.S.A. 44-534a(a)(2).